

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**DILLON M. KRIVOHLAVEK,**

**Defendant.**

**CASE NO. 8:07CR418**

# MEMORANDUM AND ORDER

This matter is before the Court on Defendant Dillon Krivohlavek's Motion to Vacate pursuant to 28 U.S.C. § 2255 (Filing No. 154), which he filed on January 14, 2013. However, on January 3, 2013, Defendant filed a notice of appeal. (Filing No. 145.) Because a "federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously," *United States v. Ledbetter*, 882 F.2d 1345, 1347 (8th Cir. 1989), it is generally the case that a defendant cannot seek relief under "28 U.S.C. § 2255 or habeas corpus while an appeal from conviction is pending," *Masters v. Eide*, 353 F.2d 517, 518 (8th Cir. 1965). Indeed, the filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Ledbetter*, 882 F.2d at 1347. Defendant has not identified any extraordinary circumstances that would justify moving forward with his § 2255 motion while a direct appeal is pending. Accordingly,

IT IS ORDERED:

1. Defendant Dillon Krivohlavek's Motion to Vacate pursuant to 28 U.S.C. § 2255 (Filing No. 154) is denied without prejudice; and
2. The Clerk shall mail a copy of this Order to Defendant at his last known address.

DATED this 15<sup>th</sup> day of January, 2013.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge